

Prior law provided that when the district attorney alleged that a firearm was used in the commission of a felony and moves for imposition of sentence under applicable provisions of prior law authorizing enhanced penalties for the use of a firearm, the court shall conduct a contradictory hearing after the conviction. Provided that if the court finds by clear and convincing evidence that such a firearm was used in the commission of the offense, the defendant shall be subject to the following sentences:

- (1) If the maximum sentence is less than five years, then a sentence of five years shall be imposed.
- (2) If the maximum sentence is less than five years, then the maximum sentence shall be imposed.
- (3) If the subject felony offense is a violent felony, then a minimum sentence of 10 years shall be imposed. Prior law included as violent felonies: 1st degree murder, 2nd degree murder, aggravated rape, aggravated sexual battery, aggravated kidnaping, aggravated burglary, carjacking, or armed robbery.

New law retains these provisions of prior law and requires that the motion specify the sentencing provisions under proposed law which the district attorney intends to invoke. Further changes prior law regarding the commission of a violent felony if a firearm is used in the commission of such a felony as follows: (1) to provide that the felonies included as violent felonies for purposes of new law are aggravated sexual battery, aggravated burglary, carjacking, armed robbery, second degree kidnapping, manslaughter, or forcible rape; and (2) if the firearm is discharged during the commission of such an offense, then the minimum sentence imposed is 20 years.

New law further provides that if during the trial or at its completion, the court determines by clear and convincing evidence that the state has established that a firearm was used, actually possessed, or discharged during the subject offense, then the contradictory hearing provided for in prior law may be dispensed with by the court.

New law changes prior law to provide that when the court conducts a contradictory hearing, it shall determine whether the firearm was discharged, used, or actually possessed during commission of the subject offense and whether the mandatory sentencing provisions of new law are applicable. Further provides that the district attorney must prove such discharge, use, or actual possession, by clear and convincing evidence.

New law provides as follows with regards to the imposition of sentence:

- (1) If it is determined that the offender actually possessed a firearm during the commission of a felony considered as a "crime of violence" under existing law, or during commission of felony theft, or production, manufacturing, distribution, dispensing, or possession with the intent to produce, manufacture, distribute, or dispense a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Law, or a specifically enumerated misdemeanor, the court shall impose a sentence of two years. If the maximum sentence for the subject offense is less than two years, then the court shall impose the maximum sentence. Existing law included the following as "crimes of violence": solicitation for murder, 1st or 2nd degree murder, manslaughter, aggravated or 2nd degree battery, aggravated assault, mingling harmful substances, aggravated, forcible, or simple rape, sexual, aggravated

sexual, oral, or aggravated oral sexual battery, intentional exposure to the AIDS virus, aggravated, 2nd degree, or simple kidnapping, aggravated arson, aggravated criminal damage to property, aggravated burglary, armed, 1st degree, or simple robbery, purse snatching, extortion, assault by drive-by shooting, aggravated crime against nature, carjacking, or illegal use of weapons and dangerous instrumentalities.

- (2) If it is determined that a firearm was used in the commission of the felony or enumerated misdemeanor, then the court shall impose a sentence of five years. If the maximum sentence for the subject offense is less than five years, then the court shall impose the maximum sentence.
- (3) If it is determined that a firearm was discharged in the commission of the felony or enumerated misdemeanor, then the court shall impose a sentence of 10 years. If the maximum sentence for the subject offense is less than 10 years, then the court shall impose the maximum sentence.
- (4) If it is determined that discharge of the firearm caused any bodily injury, then the court shall impose a sentence of 15 years. If the maximum sentence for the subject offense is less than 15 years, then the court shall impose the maximum sentence.

New law provides that the offender is not eligible for parole during the period in which the enhanced penalties are imposed. New law includes the following as enumerated misdemeanors: (1) violation of a protective order involving an assault or battery of the person protected; (2) theft; (3) simple battery; (4) aggravated assault; and (5) stalking.

Effective August 15, 1999.

(Amends C.Cr.P. Arts. 893.1, 893.2(A) and (C), 893.3, and 893.4; Adds C.Cr.P. Art. 893.2(D) and (E))